

**NATURAL RESOURCES COMMISSION**

Canyon Inn, McCormick's Creek State Park  
451 McCormick Creek Park Road, Spencer, Indiana

Minutes of May 21, 2008

**MEMBERS PRESENT**

Bryan Poynter, Chair  
Robert Carter, Jr., Secretary  
Patrick Early  
Mark Ahearn  
Mary Ann Habeeb  
Larry Klein  
Brian Blackford  
Phil French

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Stephen Lucas  
Sandra Jensen  
Jennifer Kane

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

Ron McAhron	Executive Office
Ryan Hoff	Executive Office
John Davis	Executive Office
Glen Salmon	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Tom Flatt	Fish and Wildlife
Amanda Ricketts	Human Resources
Cheryl Hampton	Human Resources
John Bacone	Nature Preserves
Dan Bortner	State Parks and Recreation
Ginger Murphy	State parks and Recreation
Steve Morris	Outdoor Recreation
Jon Eggen	Water
Jim Hebenstreit	Water
Bourke Patton	Natural Resources Foundation
Herschel McDivitt	Oil and Gas
Ihor Boyko	Legal

**GUESTS PRESENT**

Jack Corpuz	Mike Phelps	Carle Kelle
Wes Barnett	Marlene Barnett	Wayne Mercer
Brandon Meltzer	Charles Lassiter	Deborah Mansfield
Ed Snodgrass	Greg Wamden	Bryan Algood
Robin Wilson	Jason Kissel	Maria Steiner

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 2:08 p.m., EDT, on May 21, 2008 at Canyon Inn, McCormick's Creek State Park, 451 McCormick Creek Park Road, Spencer, Indiana. With the presence of eight members, the Chair observed a quorum.

Larry Klein moved to approve the minutes of March 18, 2008. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

The Chair announced that Michael Kiley, former Commission Chair, passed away. "I certainly was affected by him in the very short time that I knew him and worked with him here on the Commission. He was probably one of the most gracious and hospitable people." The Chair then asked Stephen Lucas to share a few words and reflections—"after decades of working together, what he meant to you, and meant to the State of Indiana and the natural resources?"

Stephen Lucas noted that Mr. Kiley was with the Commission for "many years or actually decades. He was the longest seated chair. He was an amazing person to work with. He carried us through fundamental changes as we moved the Commission from maybe a little bit of a side role to a core role in natural resources management." Lucas added, "From a personal side, I did know Mike for a long time. He and I were from somewhat different years but fellow 'Notre-domers'. He definitely knew how to live and he was a great dad and husband. I talked to Mike just a couple weeks ago and we had planned to get together. We didn't quite get the job done. He was a great friend to the State of Indiana, a great friend to the Commission, and a great friend to me. He will be missed."

The Chair thanked Lucas for his reflections. "I know that there are so many here on the staff and within the Department of Natural Resources over the decades enough can't be said. Upon his retirement, I was so thrilled that we were able to recognize him. I believe one of the Law Enforcement buildings will potentially be named after him. He will be sorely missed."

### **Reports of the Director and Deputies Director, and Natural Resources Advisory Council**

Director, Robert Carter, Jr., gave his report. He indicated that all the properties are "gearing up for some of the busiest weekends of the year." The Director noted that "most" of the campgrounds and parks are "99.9% full, which is very good news" for the Division of State Parks and Reservoirs. He announced that several nature preserve dedications would occur this summer with possible attendance by the Governor. He also announced that the Division of Forestry will have a ribbon cutting ceremony at Deam Lake State Recreation Area for the new horse camp.

John Davis, Deputy Director for the Bureau of Lands, Recreation and Cultural Resources, reported that the Department participated in the successful Bald Eagle Recovery Program resulting in the federal delisting of the eagle—a “big victory” for the Non-Game Program within the Division of Fish and Wildlife. “We also tagged peregrine falcons today—which is another successful program.” He noted that there was a “nice harvest” of muskellunge at Brookville Lake.

Davis explained that the Department had made an attempt to retrieve through mass mailings anglers whose fishing licenses have lapsed. “Lots of people do not renew their licenses every year.” He noted that 1,200 responses have been received from the 50,000 mailed. “That’s a good thing.”

Davis reported that the Division of Nature Preserves hosted the legislative Budget Committee on several “really instructive hikes to help the understanding of what the Divisions does.” He also introduced and welcomed Bourke Patton as the Executive Director of the Heritage Trust Foundation. “We expect [Bourke] to be a big piece of our Foundation work”.

Davis noted that Commission members will have an opportunity to tour Goose Pond immediately after today’s meeting, as well as a coal mine the following day. The Chair said, “That’s the reason that we like to take these Commission meetings around the state so we have an opportunity to be closer to issues perhaps that are sensitive to the area, and an opportunity to come down and see the wonderful resources, like Goose Pond, that we often talk about and have taken action upon.”

The Chair noted that several Commission members participated in a hike earlier in the day, through a portion of the McCormick’s Cove Nature Preserve, guided by Tom Swinford. The Chair commented, “I want to put [Tom Swinford] in my back pocket and walk around the woods with him. I learned more in that half hour than I did in ten years of wandering the woods.”

Ron McAhrn, Deputy Director, Bureau of Resource Regulation, announced that May is Historic Preservation Month. He said events are being held across the state to teach participants about Indiana history and architecture. “There is a tremendous diversity of opportunity to view Indiana’s heritage.” McAhrn also noted that June is designated as Invasive Species Month. “You will see signs around [McCormick’s Creek] and all the parks concerning emerald ash borer.”

Patrick Early, Chair of the Advisory Council, reported that several of the NRC’s agenda items were previously reviewed by the Advisory Council. “We recommended the approval of a nonrule policy document that deals with cumulative effects under the Flood Control Act, which really gives better direction to our Department.” He noted that the Advisory Council reviewed the proposed amendment to the definition of “lake”, and continued to “work through” issues relating to piers and marinas in both navigable waterways and public freshwater lakes. Early said the Advisory Council reviewed the

rule proposal relating to extraction of creek gravel from waterways, both navigable and nonnavigable.

The Chair thanked the Advisory Council for its dedication.

The Chair introduced the newest member of the Commission, Phil French. At the request of the Chair, French provided a brief biography.

The Chair invited Commission members to take advantage of an opportunity to visit the East Fork Fish Hatchery and the Glendale Fish and Wildlife Area on June 19. He provided members with the event's agenda.

The Chair updated Commission members on the activities of the Steering Committee which is tasked with evaluating the infrastructure of the fish and wildlife rules. "There are things that we can change to help not only law enforcement but the consumers of the state—the hunters, the fishermen, and the outdoorsmen." He said the six-member Committee has met once and will meet three or four times in the coming year. "We hope to have a formal report to the Commission at the September meeting. The Chair thanked Sandra Jensen and Stephen Lucas for their assistance.

#### **DNR, EXECUTIVE OFFICE**

##### **Consideration and Identification of Any Topic Appropriate for Referral to the Advisory Council**

No new topics were presented for referral to the Advisory Council.

#### **DIVISION OF NATURE PRESERVES**

##### **Consideration of the Dedication of the Millard Sutton / Amos W. Butler Audubon Sanctuary Nature Preserve, Johnson County**

John Bacone, Director of the Division of Nature Preserves, presented this item. He noted that the Millard Sutton/Amos W. Butler Audubon Sanctuary is "one of the few high quality remnants of a floodplain forest—a fairly large floodplain forest—that's left in the state". The 76-acre sanctuary is located in the northwest corner of Johnson County and is owned by the Central Indiana Land Trust (CILT). Bacone also noted that the CILT is one of the Department's partners, has several nature preserves, and has partnering with the Natural Resource Damages Assessment. He said that a portion of the Guidant resource damage settlement has been used to fund conservation projects along the White River.

Bacone said the "unique" floodplain forest has the "largest heron rookery in the state". He then introduced Maria Steiner with CILT.

On behalf of the CILT, Maria Steiner thanked the Commission for its consideration of “ensuring the protection” of the sanctuary. “This property houses the largest great blue heron rookery, a location where over 500 nests had been counted. The honor of being a state dedicated nature preserve will ensure that the habitat needed for this fragile nesting area will remain intact in perpetuity.” She noted the CILT has protected over 2,800 acres in Central Indiana and manages the preservation of 19 different properties, which five are soon to be state dedicated nature preserves.

Addressing the Commission, Steiner said, “You are a valuable partner to the Central Indiana Land Trust and the other land conservation organizations around the state in the protection of natural areas. We believe this is a mutually beneficial partnership that allows for the protection of preserves such as this without the use of state dollars.” She emphasized that this sanctuary was “protected entirely with privately raised dollars” donations coming from the Amos W. Butler Audubon Society, The Friends of the White River, Central Indiana Land Trust members, and other individual donors. Steiner noted CILT owns and manages the property “saving the state money and the maintenance of land ownership.”

Steiner again thanked the Commission for its consideration and “continuing to see that land protection is a vital part of our community not just for the plants and animals that inhabit it, but for the people to enjoy as well.” Bacone then recommended that the sanctuary be dedicated as a state nature preserve.

Mary Ann Habeeb moved to dedicate the Millard Sutton/Amos W. Butler Audubon Sanctuary as a state nature preserve. Robert Carter, Jr. seconded the motion. Upon a voice vote, the motion carried.

### **Consideration of the Dedication of Hathaway Preserve at Ross Run Nature Preserve, Wabash County**

John Bacone also presented this item. He said the Hathaway Preserve at Ross Run Nature Preserve is located in Wabash County. “Usually the preserves we bring to you for your consideration are dedicated for biological reasons. That is the case here, as well, as there is a very high quality cliff community that is loaded with interesting and rare plants, but it also has geologic significance.” He provided Commission members with images of the geologic features present at the site. “It’s rare to have a site with this old of bedrock exposures in these features in the northern half of the state.” Bacone then introduced Jason Kissell from the ACRES Land Trust.

Jason Kissell addressed the Commission and provided additional images of the preserve. He noted that the property “caught the eye” of ACRES “not because of the vegetation on it, but because of the geology of the site.” He explained that the site contains a continuous bedrock-floored stream, which is “unusual in our part of the state.” The site also contains waterfalls and exposed bedrock cliffs that are as high as 75 feet. “From the picture you can see the cliff contains a lot of ancient reef fossils, nautilus, sea sponge,

reef fragments, and things you would expect to see in a tropical reef situation.” Kissell noted that area geologists “keyed ACRES” onto the site. “We are glad they did, because it has turned out to be a wonderful property.” He also noted ACRES was able to acquire the 20-acre parcel fronting the property to “further protect this area.”

Kissell said ACRES owns 65 nature preserves, 26 of which are state dedicated. “We have about ten that are going to be coming down the line.” He concluded, “We sure appreciate the status of a state dedicated nature preserve.”

The Chair asked, “How does a property like this come to ACRES for consideration?” Kissell explained that the site was presented in an “auction flier. We keep in touch with all the land appraisers, auction people, and the real estate people. We just happened to see this.” He said that geologists reviewed the site and indicated the area was “really of statewide significance.” Kissell noted that ACRES purchased the property in March 2007 with Indiana Heritage Trust money and private donations.

Larry Klein moved to approve dedication of the Hathaway Preserve at Ross Run Nature Preserve located in Wabash County. Mary Ann Habeeb seconded the motion. Upon a voice vote, the motion carried.

#### **DIVISION OF LAND ACQUISITION**

##### **Consideration of Approval of use of Funding, from the lifetime Hunting, Fishing, and Trapping License Trust Fund, for the Acquisition of Property in the Minnehaha Fish and Wildlife Area**

Nick Heinselman, Director of the Division of Land Acquisition, presented this item. He explained that the Minnehaha property has been in the state fish and wildlife system since the early 1980s. “We have leased Minnehaha for that period of time for \$1 per year. So, it has been a pretty good deal for the state of Indiana.” He noted that improvements have been made to the property such as boat ramps. Heinselman said the lease with Peabody Energy expired a couple years ago but has been informally extended. “However, Peabody Energy is ready to sell the property”, and the Department has entered into negotiations for purchase. Heinselman said that statute requires Commission approval be given initially for the expenditure of Lifetime License money. The project is then presented to the State Budget Agency for approval.

Glen Salmon, Director of the Division of Fish and Wildlife, presented additional information. He noted that several state properties—including the Goose Pond and Green-Sullivan State Forest—are in close proximity to Minnehaha. “For a recreational area, that whole part of the state is really important to us.” Salmon also noted “this is the first time to ask for Lifetime License money that the statute allows. We want to have this in our pocket if we do move ahead with the purchase.”

Salmon explained that Peabody Energy requests to reserve mining rights on a portion of the property. “It’s a little different property that we would manage.” He noted Sugar Ridge Fish and Wildlife Area has a mining reserve, which “we work around”. Salmon said Indiana Heritage Trust has approved the project. Heinselman noted that the property to be purchased is “a little over” 8,000 acres.

The Chair commented, “I can’t think of a better project that this Commission should throw its support behind. I appreciate your productivity, and I know you have been working tirelessly through this” and “that’s exactly what the [Lifetime License] Trust was set up for. I can’t think of anything more worthy to do.”

Klein asked, “Did I hear correctly that this is the first time that the [Lifetime License Fund] reserve has been used for acquisition?” Salmon answered affirmatively and explained the statute was amended two years ago to allow fund expenditure specifically for acquisition of hunting and fishing land. Klein then asked, “You are allowed up to 50% of its value?” Salmon answered, “Correct, of the appraised value.”

John Davis noted that there was a “huge purchase” of lifetime licenses prior to expiration of the lifetime licenses causing the trust balance to increase significantly. “We had a fund that had been operating as steady funds coming in and then it had a balloon. So we ended up trying to figure out a way to return that to lifetime license buyers. We thought buying land made sense and so did the Legislature.”

Patrick Early moved to approve use of funding from the Lifetime Hunting, Fishing, and Trapping License Trust Fund for the acquisition of property in the Minnehaha Fish and Wildlife Area. Larry Klein seconded the motion. Upon a voice vote, the motion carried.

## **DIVISION OF WATER**

### **Consideration for Preliminary Adoption of Amendments to Address Piers, Marinas and Related Matters in Navigable Waters; Administrative Cause No. 08-009L**

John Davis presented this item and said the proposed rule amendment was forwarded to the Commission through the Advisory Council. He was “unsure” of the affect the rule would have on the state-managed federally-owned and some state-owned reservoirs “where [the Department] owns the entirety or almost the entirety of the shoreline.” Davis said that further discussions within the Department indicate the “situation is even a little more complex than I had understood.” He asked the Commission to send the rule proposal back for further Department review “so that our reservoir specialist may take part in a discussion to perfect” the proposal.

Larry Klein moved to remand the proposed amendments to address piers, marinas and related matters in navigable waters for further review. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Amendments to Definition of “Lake”; Administrative Cause No. 08-047A**

James Hebenstreit, Assistant Director for the Division of Water, presented this item explaining that the Legislature created a new definition of “lake” within the Lakes Preservation Act. The rule amendment incorporates the expanded definition. “The new legislation calls for the [Department] to develop a list of public freshwater lakes, so this rule is to help facilitate that process.”

Stephen Lucas added that the rule amendment is a “housekeeping measure, but it is important.” He then recommended preliminary adoption of the rule amendment as presented in the Commission’s packet.

Patrick Early moved to give preliminary adoption of amendments to definition of “lake” at 312 IAC 1-1-21. Mary Ann Habeeb seconded the motion. Upon a voice vote the motion carried.

**DIVISION OF FISH AND WILDLIFE**

**Consideration of Response to Citizen Petition for Rule Change to add License Fee for Nonresident youth; Administrative Cause No. 08-035D**

Linnea Petercheff, Operations Staff Specialist with the Division of Fish and Wildlife, presented this item. She explained that a citizen petitioned to add a new reduced license fee for nonresident youth consolidated license. Following the guidelines contained in the Commission’s Information Bulletin #7, the Department investigated the merits of the petition. Petercheff said the DNR determined that the governing statute “only allows a youth license to be issued to a resident and not a nonresident. At this time, the youth license fee is not applicable for what the [petitioner] was wanting.” She noted that an explanation of the statute was provided to the petitioner.

Petercheff said the Commission can change fees, “but we can’t add the ability for a nonresident youth to get the youth consolidated hunting and fishing license until the statute is changed.” She said that Sandra Jensen from the Commission’s Division of Hearings sent a letter including the Department’s April 29, 2008 memorandum to the petitioner.

The Chair asked, “Is there any way we can address at the Commission level by the definition of whether you are a [resident] youth or a [nonresident] youth—you’re just a youth?” Petecheff explained that the statute states “resident youth consolidated hunting and fishing license”. She noted that surrounding states do have a resident and a nonresident youth hunting license with differing fees or offer combined licenses. “For some reason, [Indiana’s] statute only sets up the youth consolidated license for a resident. It’s not a definition of ‘youth’ at this point that’s in question”.



The Chair said, "The reason I bring that up is that the petitioner's letter makes some extremely good points." Larry Klein agreed. The Chair continued, "It makes some extremely good points that are actually counterproductive to what I think we've taken action on in this Commission and what the Department is trying to do.... I'm hopeful that if nothing else the Department seeks to reconcile that in some way such that we are not prohibiting and not dismissing that [the petitioner] makes as very good points".

Sandra Jensen noted that the petitioner contacted her after his receipt of the Department's memorandum. "He was very appreciative of the fact that we even looked into it.... My impression is that [the petitioner] intends to go forward with the idea of contacting legislators to take care of this with your and the Department's instruction."

The Chair said, "I would be open to have a discussion with whomever. If there is a reason that we shouldn't or can't, or we wouldn't support a legislative change of that definition, I would hope the direction is that we can investigate that because [the petitioner] makes very good points." Salmon said, "We need to sell licenses." He also said the current statutes were written in a "different era, and we need to take a fresh look at all those like we did for the apprentice hunting license.... We need to be very active in selling licenses and find ways to especially get youth into the fold. We make it too hard sometimes."

Klein asked whether the Commission could take action in the interim to establish a license. Lucas said, "I think what Linnea reflects is accurate. It's a fundamental problem with the statutory structure" which "isn't terribly complicated to change but would take a statutory modification."

**Consideration of Request for Approval of Revisions to the Natural Resources Commission Nonrule Policy Document, Information Bulletin #54, Addressing License Fees for Hunting, Fishing, and Trapping; Administrative Cause No. 08-074D**

Linnea Petercheff also presented this item. She explained Information Bulletin #54 is amended to add new license types created by the Legislature in the last two years, such as the senior annual fishing license, and senior fish for life license. "New legislation this year sets up apprentice hunting licenses, which is one of the efforts that's being made to help individuals to go out and hunt without having to take the Hunter Education Course. They can be of any age, any residency to get this license." She noted Michigan has similar licenses. The statute also allows for sale of duplicate licenses to nonresidents. "With point of sale system, we are able to verify" a license purchase.

Jack Corpuz addressed the Commission. He observed that the information bulletin does not include a nonresident youth consolidated license. Petercheff reiterated that there is no provision in the governing statute for a nonresident youth consolidated license. The Chair commented, "Right. That's what we just talked about. Hopefully we will try to get that rectified in some way."

Mary Ann Habeeb moved for approval of revisions to the Natural Resources Commission nonrule policy document, Information Bulletin #54, addressing license fees for hunting, fishing, and trapping. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

**Recommendation for Preliminary Adoption of Proposed New Rules for Creek Rock Extractions from Waterways; Administrative Cause No. 07-203W**

Jon Eggen, Head of Compliance Section of the Division of Water, presented this item. He provided Commission members with images depicting in-stream gravel removal operations. He explained that the proposed rule amendments would govern activities in waterways through both the Navigable Waterways Act and the Flood Control Act. He noted that the Commission's Information Bulletin #3 lists Indiana streams that are found to be navigable. "Waters under the jurisdiction of the Flood Control Act include all of the waterways that have a watershed greater than one square mile, but some of these jurisdictions overlap."

Eggen pointed out that IC 14-29-1 (Navigable Waterways Act) states that a person may not remove material from a navigable waterway without a permit from the Department. The Flood Control Act regulates excavation in floodways and requires consideration be made, through the permit process, to any impacts the fill may have on fish and wildlife. IC 14-28, which regulates construction in a floodway, also governs. Eggen explained that the activities addressed in the proposed rule amendments require permits under both Acts.

Eggen said the rule amendment would create a general license. "A general license basically pre-approves activity that would not need an individual permit as long as the property owner or participant that is doing the work adheres to some very specific conditions." The rule allows for "reasonable level" protection of the resource and at the same time eliminates the permit fee on the applicant's side. "It saves the state money by not having to do inspections and not having to do site visits." Eggen noted that an activity not qualifying for the general license is "not precluded", but the activity must be individually permitted by the Department.

Eggen said that the rule proposal contains two general licenses: (1) a general license without notice; and, (2) a general license with notice. Regarding a general license without notice, Eggen explained that as long as the applicant complied with conditions within the rule, the applicant would not need to notify the Department of the activity. The general license without notice would cover the removal with hand tools of sand, gravel, rock, and minerals such as gold, platinum, silver, and lead. He said the Department has a general license with notice addressing removal of log jams in waterways, after which the instant proposal is patterned. For a general license with notice, the applicant submits an application to the Department's Division of Water. "Staff reviews the application. We have ten days to review [the application] and either

approve it, deny it, or add some additional conditions to it. If [the applicant] doesn't get a response [from the Department] in ten days, it's automatically approved."

Eggen said a general license without notice on nonnavigable rivers would allow removal of material, through the use of hand tools outside of spawning seasons, with scoop type equipment and would set a yearly maximum material removal at ten cubic yards. He said the general license with notice was similar, but it would allow additional material to be removed on an annual basis. In its review of a general license with notice, the DNR would check the Natural Heritage database, the inventory of known mussel beds, and IDEM's 303d Rivers List.

Mark Ahearn asked, "What are we trying to stop from occurring?" Eggen said the Department was looking "mostly" at the impacts to fisheries and aquatic insects in the channel of the streams. "Over the years we have received numerous complaints from landowners about neighbors and different people doing creek gravel material by going into the creeks with a bulldozer and taking out the gravel beds, which removes the pools that the bass use or removes the habitat for the crawfish and the mussels. We are losing those." The Department is also addressing the downstream sediment movement, which "is the issue that started all this."

Patrick Early said the Advisory Council reviewed the proposal to navigable waterways from a philosophical standpoint that navigable waters belong to all citizens. For navigable waters, the Council believed extraction activities should be limited to non-mechanized means and these waters essentially "should be protected and left alone." For nonnavigable waterways, "we have set some limits that still allow activity that would, we believe, be reasonable and that deals with a farmer who is getting gravel out of his own creek for his barnyard, and other recreational uses." Early said the "overriding concern" is stream quality. "We don't want to discourage recreation or landowner rights, but we are just trying to limit these things to make sure there is an enforceable standard and that they are reasonable standards."

Mike Phelps from Brookston, Indiana addressed the Commission. He said he was an "amateur geologist and biologist" who began gold panning four years ago. He said after reviewing meeting minutes of the Advisory Council and its discussion of this item, "we get the distinct impression that maybe you don't understand prospecting, or what we are doing, or why." Phelps said that prospecting does not offer "much in-hand reward" because there is "very little gold" in Indiana. He circulated examples of Indiana gold among the Commission members.

Phelps said that recreational prospecting should not be regulated with the same rules as creek rock extraction, but he agreed that creek rock excavation should be regulated. In prospecting, "we do not remove material in quantity" and "it all goes back into the stream". Phelps also circulated a sample of lead removed from streams. "Gold is about nine times heavier than everything in the stream except lead.... We get a lot of black sand, lead, and a little bit of gold." Phelps noted that when he is prospecting "we drag out trash that others have left."

The Chair asked Phelps, “How does this proposed rule affect what you do?” Phelps said the proposed rule will “virtually destroy or make it impossible” to continue recreational panning. He explained that filing a site plan and the prohibition of recreational dredging within ½ mile of areas listed in 312 IAC 10-5-10(d) would cause hardship. “I don’t know” where those areas are located.

Phelps said that other states have attempted to regulate recreational mining and cited the U.S. Army Corps’s Special Public Notice 94-10 (SPN 9410). He read from SPN 9410: “It has been determined except in extraordinary circumstances that recreational suction dredge mining using an intact nozzle equal to or less than four inches and hand mining in waters of the United States would have *de minimis* effects on aquatic environment.” He concluded by requesting the Commission to separate recreational panning and dredging from the proposed rules governing creek rock excavation to allow further study. Phelps also requested to be included in any further discussions regarding the rule proposal.

Carle Kelle said he represented the Southern Indiana Chapter of the Gold Prospectors Association of America which has approximately 45 active members. He noted that he owns a four-inch suction dredge which would be made “useless” if the proposed rules are adopted. Kelle said, “If I live to be 100, I won’t move ten yards of material out of the creeks.” He noted that his dredge included the manufacturer’s screen, but “I also keep it in a milk crate with screen wire around it so I actually don’t suck anything up in the pump.” Kelle said holes in the beds of waterways are produced in recreational dredging, but “one rain later it is gone or we push it back in ourselves.” He cited an article in *USA Today* that indicated Morgan-Monroe State Forest is one of the gold “hotspots” in the United States.

Kelle said he has removed lead and mercury from Salt Creek. “In fact, instead of destroying the creek, I would like to tell you that I think we’re preserving the creek. You are taking away a hobby that I just thoroughly enjoyed for 15 years.”

The Chair asked Patrick Early whether he would consider a motion to “take this [item] back” to the Advisory Council to “address some of these issues?” Early said, “That makes sense to me.... I think the best thing to do in this case is to let it go back.” He added, “Our efforts are to promote recreation not to limit it. So, certainly we are going to listen to what you are saying. There is no intent to try to limit things that do not do damage to the environment. If we can determine that is the case, then certainly there is room for compromise”. Ron McAhron agreed and invited the guests interested in this item to meet after the Commission meeting. Director Carter said, “We appreciate you coming in, and we will work with you on this. Obviously, you are doing some good stuff out there.”

Wayne Mercer addressed the Commission and said that creek rock removal should be regulated. “We need these regulations for our protection.” He noted that recreational panning has been “completely unregulated until now.” Mercer said the rule proposal did

not contain a “grandfather clause and no compensation so basically they are taking away our real property and telling we can’t use” our equipment.

The Chair stated, “I make a motion that we preliminarily adopt” the portions of the rule pertaining to aggregate extraction but “separate out the recreational mining aspect of this so that [the Department] can meet with the prospectors and otherwise move this forward.... I think we are all in agreement that we can get this fixed.”

Mercer noted that economic impacts of this rule proposal have not been addressed. He said he was employed at the Gatesville Country Store, and “95% of our campers are prospectors, and out of that 60% to 70% of those are from out of state.” Early reflected, “We are going to work on it.”

Wesley Barnett addressed the Commission and provided comments from a landowner’s perspective. He said that he excavates creek gravel to maintain roads on his farm. Barnett urged that the rule proposal would “take the responsibility of determining the uses of the [creek rock] that comes off of our land.”

The Chair added that the Commission would continue to “welcome public comment” regarding the rule proposal. He asked for a second to the pending motion.

Mark Ahearn asked, “Are we removing references to recreational panning and recreational dredging?” Lucas said he understood that was the essence of the pending motion and is how it would be applied by the Division of Hearings if approved. Early asked, “We are sending the mining part ultimately back to the Advisory Council, correct?” Lucas said it was his understanding the “mining aspect was to be reviewed again by the Department and by the Advisory Council.” The Chair confirmed that Lucas’s understanding was correct.

Mark Ahearn then seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Approval of a Nonrule Policy Document, Information Bulletin #57 to Address Cumulative Effects under the Flood Control Act; Administrative Cause No. 08-052W**

Linnea Petercheff presented this item. She distributed paper copies of a modified analysis form which would be attached as an appendix to the proposed nonrule policy document. Petercheff said Information Bulletin #57 would provide “detailed guidance to Department staff” for analyzing the cumulative effects of activities when licenses are sought under the Flood Control Act. In addition, the public would have a better understanding of how the analyses are performed. She reflected the analyses were required by the statute and the rules. “Cumulative effects can result from individually minor but collectively significant actions. They can include hazards to safety of life and property or detrimental effects to fish, wildlife, or botanical resources.” Petercheff said

the analysis form would provide a “check list,” and “everything is given a chance to be documented in the file.”

Petercheff said the Division of Fish and Wildlife would review the impacts to fish, wildlife, and botanical resources portion. The review would include comments from the Division of Nature Preserves regarding rare and endangered species in proximity to a dedicated nature preserve. The Division of Water would provide analyses regarding impacts to flooding and public safety. “Again, [the analysis form] provides a document that the public can see and helps [the Department] staff when they review all of the applications.”

Patrick Early moved to approve Information Bulletin #57 regarding cumulative effects under the Flood Control Act, as a nonrule policy document, including the amended cumulative analysis form distributed during the meeting. Larry Klein seconded the motion. Upon a voice vote, the motion carried.

#### **DIVISION OF OIL AND GAS**

##### **Consideration of New Nonrule Policy Document to Address Oil and Gas Drilling Unit and Well Spacing Requirements for Horizontal Wells; Administrative Cause No. 08-076G**

Herschell McDivitt, Director of the Division of Oil and Gas, presented this item. He provided Commission members information sheets illustrating historical aspects of drilling of oil and gas wells, including horizontal well graphics. He said the Division of Oil and Gas is an “example...that demonstrates the diversity and the breadth of resources that the Department is involved in managing.” McDivitt said that higher prices for crude oil have caused a “renewed interest in drilling for oil and gas in Indiana.” Beginning in 2003, there was a “significant increase in horizontal well drilling activity”, with the majority of horizontal well activity for natural gas wells in the New Albany shale in southwestern Indiana.

McDivitt said that horizontal drilling brings “exciting new opportunities” for oil and gas operators, but “along with it comes some challenges” to the regulators. He said the existing oil and gas rules have been amended “very little” since the enactment of the Oil and Gas Act in 1947, but have “served our program well”. He noted that the rules were adopted when “all” oil and gas wells were drilled with vertical well technology. He also noted horizontal well technology is becoming “more and more prevalent”; however the rules do not contemplate this type of drilling activity. “What we have done is attempted as best we can to take the existing spacing rules and apply them as reasonably as we feel possible” in the nonrule policy document.

McDivitt said, “We believe we have come to a point where we need to develop specific rules and regulations for horizontal wells.” He explained the proposed nonrule policy document was an attempt within the existing rules to adapt specific requirements to allow

operators to continue to permit wells through horizontal application. The nonrule policy document would provide guidance as new rules are promulgated. He explained that the nonrule policy document would provide definitions of standard terms used in other states and would address well spacing specific to horizontal wells.

The Chair asked whether the Division of Oil and Gas was satisfied with the nonrule policy document. McDivitt answered in the affirmative, but he added, "I think there are other things we need to do, but I think they go beyond what probably should be managed as a nonrule policy document." He said operator input would be sought as a rule proposal comes forward.

Early inquired whether property line issues arise in the process of horizontal drilling. "Are people going and extracting oil and gas out from under other people's properties?" McDivitt answered, "That's one of the basic protections that the Oil and Gas Act provides is to ensure that that type of activity doesn't occur." He explained that when an oil and gas operation is permitted, the Department is "defining the acreage that is assigned to the well, the acreage within which all of the owners of that property is entitled a share in the production. That's essentially what this nonrule policy document is intended to do is to clarify that process." He said that a minimum of 40 acres leased is assigned to a vertical well. "What this policy does is that with a horizontal well many of these wells can extend 4,000 or more feet once they enter into that formation. Obviously, you are going to traverse more than 40 acres of property." He said the nonrule policy essentially "aggregates 40-acre increments depending on the trajectory of that well bore."

Klein asked whether the Department inspects horizontal well activity. McDivitt answered in the affirmative. Klein then asked, "So you know how far that [horizontal well] has gone?" McDivitt again answered in the affirmative, and he added that the operators are required to file a completion report and survey.

Mark Ahearn asked whether horizontal drilling eliminates landowners from having to "race to put up their own wells?" McDivitt said, "Absolutely. It's a definite win-win in many respects. The actual footprint, as far as surface impacts...are a fraction of what they would be for a similar area developed strictly with vertical wells." A horizontal well operation includes one "well pad from which the horizontal well would be drilled" and an associated road for access.

Director Carter thanked McDivitt and noted McDivitt's efforts in working with the industry. The Director invited Commission members to a field trip to view a horizontal well operation.

Patrick Early moved to approve the nonrule policy document, Information Bulletin #58, to address oil and gas drilling unit and well spacing requirements for horizontal wells. Mary Ann Habeeb seconded the motion. Upon a voice vote, the motion carried.

**DIVISION OF STATE PARKS AND RESERVOIRS**

**Information Item: New Hoosier Quest program**

Dan Bortner, Director of the Division of State Parks and Reservoirs, welcomed the Commission to McCormick's Creek State Park. He said McCormick's Creek State Park was Indiana's first state park. The park was dedicated on July 4, 1916 and now encompasses 1,924 acres, two nature preserves, and full campgrounds. He then introduced the Assistant Director for Stewardship with the Division of State Parks and Reservoirs, Ginger Murphy.

Ginger Murphy said that one of the purposes of the Division of State Parks and Reservoirs is to connect families with the outdoors—"To get them outside to experience the outdoors, learn about our history, learn about our culture, and our parks and reservoirs." The Division is offering a three-pronged program called "Discover. Connect. Explore." She provided Commission members with a pamphlet detailing the "Explore" portion of the program. Murphy explained that state park visitors who attend a naturalist program, hikes, and completes other required activities can purchase a pin from that particular state park or reservoir property. "We are expecting a lot of people to want to collect the whole set."

**Information Item: State Parks and Reservoirs Centennial**

Ginger Murphy also presented this item. She noted that McCormick's Creek was a centennial gift to the state of Indiana, and "just eight years from now we will be celebrating our 100<sup>th</sup> Birthday. She said the Division of State Parks and Reservoirs has a task force that is planning for the celebration with events starting in 2010. Murphy said each state park property and reservoir will be able to present possible event ideas. She said the Division is working with WTIU in Bloomington. WTIU is putting together a history of Indiana's state parks to be released in conjunction with Ken Burns's *History of the National Park System*. "We are going to sort of tag along on their coattails. One of our public television stations is going to release [Indiana's] history at the same time the national park history is released."

Murphy said a Blue Ribbon Panel is being formed to review and evaluate, over the next six to eight months, the Department's state parks and reservoirs system. She concluded, "We are just really excited about what the future holds for the celebration." She invited Commission members to offer suggestions or ideas they may have regarding the celebration as well as other state park and reservoir programs and "to think about where we want to go in the second 100 years."

The Chair thanked Bortner, Murphy, and the staff of the Division of State Parks and Reservoirs for their efforts.



**Consideration of Recommendation for Final Action on Readoption of 312 IAC 2, Procedures and Delegations; LSA #08-52(F); Administrative Cause Number 08-001A**

Jennifer Kane, Paralegal for the Commission's Division of Hearings, presented this item. She explained that this agenda item, readoption of 312 IAC 2, and the next agenda item, readoption of 312 IAC 5, are similar as to process and appropriate for readoption. She said that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. She noted that the Director of Division of Hearings gave preliminary adoption to each of the two articles.

Kane said for consideration are the readoption of 312 IAC 2 governing the conduct of meetings of the Natural Resources Commission and any other board, Commission's delegation of authority, public hearings prior to the issuance of an agency order, and the conduct of organized activities and tournaments on public waters and 312 IAC 5 [Item 16] governing the use of any watercraft on public waters.

Kane said that no public comments were received concerning the proposed readoption of Article 2 and Article 5. She said amendments are not proposed to either article and both would be readopted in their present form. Kane said that fiscal analyses were conducted regarding the readoptions. She said the readoption of 312 IAC 2 would not result in any economic impacts to small business. She noted that the small business impacts analysis of the readoption of 312 IAC 5 ranged from sections of Article 5 having "no impact to findings of a positive impact."

She recommended the Commission re-adopt 312 IAC 2 and 312 IAC 5 as currently contained in the Indiana Administrative Code in order to prevent expiration.

Larry Klein moved to re-adopt 312 IAC 2 and 312 IAC 5. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

**Consideration of recommendation for final action on readoption of 312 IAC 5, Watercraft Operations on Public Waters of Indiana; LSA #08-57(F); Administrative Cause Number 08-003L**

[See discussion in previous agenda item.]

**Consideration of Amendment of Nonrule Policy Document for "Roster of Indiana Waterways Declared navigable or nonnavigable" (Information Bulletin #3) to include the Tippecanoe River upstream from Lake Shafer to the Pulaski-Fulton County Line; Administrative Cause No. 08-039L**

Steve Lucas, Director of the Commission's Division of Hearings, presented this item. He explained that the amendment to Information Bulletin #3 is a "refinement to the Commission's bulletin for navigable waterways" originally approved in 1992. "It's probably the most used and arguably the most successful of nonrule policy documents in that it has brought some semblance of order to a chaotic and confusing area." Lucas said before 1992 the Division of Hearings, Division of Law Enforcement, and Division of Water would receive several calls a week regarding the lack of a river listing. "Now it's a much less frequent event in our office."

Lucas said the amendment is an upgrade based upon a recent decision from the Court of Appeals at Lake Shafer. In addition, the modification is supported by historical records, including those in the Commission's packet, and it would have the "positive result of having navigability reflected consistently with public access sites" on the Tippecanoe River. He said the particular delineation was recommended by the Division of Law Enforcement and would cause the Tippecanoe River to be listed as navigable from its junction with the Wabash River in Tippecanoe County to the Pulaski County-Fulton County line at river mile 86.47. The Division of Water, the Division of Fish and Wildlife, and the Division of Outdoor Recreation were also consulted and supported the result. Lucas recommended approval of amendments to Information Bulletin #3 as indicated in the Commission packet.

Robert Carter, Jr. moved to approve amendment of nonrule policy document for "Roster of Indiana Waterways Declared navigable or nonnavigable" (Information Bulletin #3) to include the Tippecanoe River upstream from Lake Shafer to the Pulaski-Fulton County Line. Mary Ann Habeeb seconded the motion. Upon a voice vote, the motion carried.

#### **ADJOURNMENT**

The meeting was adjourned at approximately 4:03 p.m., EDT.

#### **COMMISSION TOURS**

The Commission participated in tours of McCormick's Creek State Park (McCormick's Cove Nature Preserve), Goose Pond Fish and Wildlife Area, the Minnehaha Fish and Wildlife Area, and an active Black Beauty Coal Company mining operation in Sullivan County.

#### **NEXT MEETING DATE**

The next meeting of the Natural Resources Commission is scheduled for July 15 at 6:00 p.m., CDT (7:00 p.m., EDT) in the NIRPC Building, 6100 Southport Road, Portage, Indiana.